



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03-123 and 10-51; DA 12-1644]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on matters related to access technology and enhanced database operations for video relay service (VRS) raised in recent filings submitted by CSDVRS, LLC, a VRS provider. In order for the Commission to be in a position to set new rates as it moves forward with the next phase of VRS reform, it also seeks comment on a proposal by the Fund administrator, Rolka Loube Saltzer Associates (RLSA), to modify VRS compensation rates.

DATES: Comments are due on or before November 14, 2012. Reply comments are due on or before November 29, 2012.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 03-123 and 10-51, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 03-123 and 10-51.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-

class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, or via email to fcc@bcpiweb.com.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 559-5158 (voice/videophone), (202) 418-0431 (TTY), or e-mail at Gregory.Hlibok@fcc.gov, or Robert Aldrich, Consumer and Governmental Affairs Bureau, at (202) 418-0996 (voice), or e-mail at Robert.Aldrich@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program, Public Notice (VRS Reform and Rates Notice), document DA 12-1644, released October 15, 2012, in CG Docket Nos. 03-123 and 10-51, seeking

comments on access technologies and compensation rates for VRS. The full text of the VRS Reform and Rates Notice and copies of any subsequently filed documents in this matter will be available for public inspection and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5300, or Internet: www.bcpweb.com. This document can also be downloaded in Word or Portable Document Format ("PDF") at: <http://www.fcc.gov/cgb/dro/trs.html>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Pursuant to 47 CFR 1.1200 et. seq., this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral

ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS:

Document DA 12-1644 does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4).

SYNOPSIS

Background

1. In June 2010, the Commission began a comprehensive review of the rates, structure, and practices of the VRS program. Structure and Practices of the Video Relay Service Program, Notice of Inquiry, (2010 VRS NOI), CG Docket No. 10-51, published at 75 FR 41863, July 19, 2010. The Commission's goal in beginning that review, and ever since then, has been to reform the VRS program, which for many years had been beset by waste, fraud, and abuse and by compensation rates that had become inflated well above actual cost. Since that time, the Commission has acted to improve the program so that it can continue to provide a valuable service to deaf and hard-of-hearing consumers as efficiently as possible.

2. The Commission's actions over the past two years have saved the program approximately \$300 million to date. Most significantly, in June 2010, at the same time the Commission issued the 2010 VRS NOI asking questions about potential fundamental changes to the VRS program, the Commission cut the compensation rate for the bulk of VRS traffic by more than \$1.00 per minute, the first substantial VRS

rate reduction in six years. Stressing its “obligation to protect the integrity of the Fund and to deter and detect waste,” the Commission stated that it would no longer tolerate “the large discrepancy between actual costs and provider compensation” that had resulted from earlier VRS ratesetting orders.

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order, (2010 TRS Rate Order), CG Docket No. 03-123, published at 75 FR 49491, August 13, 2010. See also Structure and Practices of the Video Relay Service Program;

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Notice of Proposed Rulemaking (2011 VRS Rate NPRM), CG Docket Nos. 03-123 and 10-51, published at 76 FR 24442, May 2, 2011.

3. The Commission has taken significant further steps to protect the VRS program’s integrity and increase its efficiency since that time. In April 2011, the Commission adopted additional wide-ranging measures to improve oversight of and prevent fraud, waste, and abuse by VRS providers. The Commission required providers to submit detailed call records to justify their requests for compensation, instituted annual as well as unscheduled provider audits, banned providers from tying their employees’ wages to the number of calls processed, and prohibited revenue-sharing arrangements between certificated, Fund-eligible service providers and unregulated companies. In July 2011, the Commission tightened the eligibility and certification requirements for VRS providers to ensure that only providers operating in compliance with the Commission’s rules would be permitted to provide this service to the public. And in December 2011, the Commission proposed additional substantial reforms to the VRS market structure and the practices of providers. Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Further Notice of Proposed Rulemaking, (2011 VRS Reform FNPRM), CG Docket Nos. 10-51 and 03-123, published at 77 FR 4948, February 1, 2012. These reforms were intended to ensure that the program continues to support services that offer functional equivalence to all

eligible users and becomes as immune as possible from the waste, fraud, and abuse that could threaten its viability.

4. Document DA 12-1644 is the next step in these ongoing reform efforts. CGB, on delegated authority, seeks comment on matters raised in recent filings submitted by CSDVRS, LLC, a VRS provider. Moreover, in order for the Commission to be in a position to set new rates as it moves forward with the next phase of VRS reform, the Bureau also seeks comment in document DA 12-1644 on a proposal by the Fund administrator, Rolka Loube Saltzer Associates (RLSA), to modify VRS compensation rates.

Additional Comment on Structural Reform Options

5. As discussed in the 2010 VRS NOI, VRS communications require the interaction of three separate yet interlinked components: VRS access technologies, video communication service, and relay service provided by American Sign Language (ASL)-fluent communications assistants (CAs). The Bureau now seeks additional comment on specific proposals to disaggregate these components. The Bureau emphasizes that neither the Commission nor CGB has decided to adopt any of these proposals; CGB is simply seeking input to help develop a more complete record to enable the Commission to better evaluate the various issues in this proceeding.

VRS Access Technology

6. As noted above, CSDVRS has submitted two structural reform proposals to the Commission. The first of these proposes that the Commission facilitate migration of all VRS access technologies to a standard, software based VRS access technology (“application”) that could be used on commonly available off-the-shelf hardware as a means of furthering the Commission’s interoperability and portability goals. The Bureau seeks comment on this proposal, and seek particular comment on the following related questions:

7. The Commission proposed to establish standards for iTRS Access Technology, including VRS Access Technology, in the 2011 VRS Reform FNPRM. Would the process for establishing and maintaining standards discussed in the 2011 VRS Reform FNPRM be appropriate for developing an application or establishing standards for an application? Should the application or key components thereof be open source?
8. Should the Commission mandate use of a single application or allow development of multiple, interoperable applications? Who should be responsible for application development? For example, should the Commission develop, by contract, such an application? How should the developer of the application be compensated?
9. Should providers be able to continue to offer their own internally developed applications? If so, under what conditions? For example, should there be an interoperability testing process? How would such an interoperability testing process be structured?
10. Should the application be full executable, or a core executable or set of libraries (“core”) that can be customized by interested parties (e.g., using published APIs), or both? If core, what key functions should this core contain, such as video encoding, video decoding and session signaling? If core, should there be a certification process before calls placed with the application are compensable? How should that process be structured? Who should be responsible for maintaining and updating applications?
11. What off-the-shelf hardware and operating system platforms should be supported? Should users be responsible for procuring their own off-the-shelf equipment, or should providers be involved in the acquisition and distribution of end user equipment to VRS users?
12. How should consumers be involved in the development, selection, certification and on-going enhancement of either the core or the application?
13. How would users obtain support for issues relating to the application or its use on their equipment (e.g., network firewall issues, troubleshooting problems)?

14. What other approaches might be considered to select an application or applications for use in the VRS system? For example, should the Commission host a competition among existing VRS access applications and/or commercial standards-based off-the-shelf video conferencing applications? What would be the benefits and drawbacks of these or other alternate approaches?
15. How would a transition to a VRS system that relies exclusively on a common application be accomplished, and over what period of time?
16. What changes in the Commission's rules would be necessary to adopt this proposal or one of the alternatives described above?

Enhanced iTRS Database Operations

17. CSDVRS also has proposed an industry structure in which all providers of ASL relay CA services would utilize an enhanced version of the TRS numbering directory to provide features such as user registration and validation, call routing, and usage accounting. In effect, this would separate the video communication service component of VRS from the ASL relay CA service component by providing the functions of the former from an enhanced database ("enhanced iTRS database"). The Bureau seeks comment on this proposal, and seek particular comment on the following related questions:

18. What functions and services should the enhanced iTRS database provide? Some possibilities include:

- Development and distribution of VRS access technology, such as a common application
- User registration and validation (account and credential creation)
- Per-call user verification (authentication)
- TRS numbering directory functions
- Usage accounting
- Call routing
 - To the user-chosen default or the per-call ASL relay CA service provider
 - To/from other end users (i.e., point-to-point calls)
 - To/from the PSTN

- 911 call processing
- Vertical features such as video mail and address book

19. How would ASL relay CA service providers interface with the enhanced iTRS database? Would each ASL relay CA service provider be required to establish its own internal routing system for distributing calls among its call centers, or should the enhanced iTRS database allow providers to specify provider-internal call routing rules?

20. CSDVRS' proposal appears to contemplate the existence of multiple video communication service providers. Is this necessary? How would the user or application choose among these providers? If the choice of the communication service provider is independent of the ASL relay CA service, based on what criteria or metrics would users or applications make that choice? Given that VRS providers currently compete primarily on quality of CA service, should the Commission contract for a single provider of the enhanced iTRS database functions, including video communication service, that allows users to access the ASL relay CA service of their choice? If the Commission does choose to contract for these functions, should there be a single contract or multiple contracts?

21. What changes in the Commission's rules would be necessary to implement such a structure?

Rate Proposals

22. As noted above, in the 2010 TRS Rate Order, the Commission stated it would no longer tolerate the "large discrepancy between actual costs and provider compensation" that had resulted from earlier VRS ratesetting orders. Stressing its "obligation to protect the integrity of the Fund and to deter and detect waste," the Commission also released the 2010 VRS NOI to consider, among other issues, "the most appropriate way to calculate and set future [VRS] rates." Subsequently, in the 2011 VRS FNPRM, the Commission proposed that, if a per-minute VRS rate was retained, it should be set based on the weighted average of actual per-minute provider costs for the most recently completed fund year. These

steps have made clear the Commission's determination to review rate issues as part of its VRS reform proceeding and to obtain VRS rates that better reflect actual expenses of VRS providers.

23. Under § 64.604(c)(5)(iii)(E) and (H) of the Commission's rules, the Fund administrator is required to file the Fund payment formulas and revenue requirements for VRS with the Commission on May 1 of each year, to be effective the following July 1. However, on April 30, 2012, the Bureau waived the Fund administrator's obligation to file proposed rates and revenue requirements for VRS for the 2012-13 Fund year by May 1, 2012. In its order adopting rates for the 2012-13 Fund year, the Bureau indicated that the current interim rates for VRS would remain in place pending the Commission's completion of the current proceeding on reforming the structure and practices in the VRS market. In anticipation of the completion of the VRS reform proceeding, or of the current phase thereof, the Commission requested the Fund administrator, RLSA, to submit proposed VRS rates for the remainder of the 2012-13 Fund year. In document DA 12-1644, the Bureau seeks comment on RLSA's proposed VRS compensation rates, as well as on alternative rate methodologies, for the remainder of the 2012-13 Fund year and subsequent years.

24. The Bureau urges parties that disagree with RLSA's proposed rates to offer specific and detailed alternatives. Further, the Bureau expects parties to focus their comments, to the maximum extent practicable, on publicly available data and to make public the details of their views and arguments, including the specific dollar amounts that they believe the Commission should adopt for specific rates or cost elements.

RLSA's Rate Proposals

25. In the 2012 VRS Rate Filing, RLSA presents a proposal for determining how VRS providers are to be compensated by the Fund. Based on its analysis of the cost and demand data received from providers, the Fund administrator states that VRS providers' weighted average actual per-minute costs were \$3.5740 for 2010 and \$3.1900 for 2011, and that VRS providers' weighted average projected per-minute costs are \$3.4313 for 2012. RLSA proposes that rates be based on an average of these three

numbers, with appropriate adjustments to reflect rate tiers. Using this proposed methodology, RLSA proposes that cost based rates be phased in over a multi-year time period, with the rates restructured in two tiers instead of the current three tiers. Based on a three-year phase-in, RLSA proposes that rates be set initially for Tiers I and II (up to 500,000 minutes each month) at \$5.2877 per minute, and for Tier III (over 500,000 minutes each month) at \$4.5099 per minute. RLSA also presents data that reflects several of the categories of compensable and non-compensable costs. The Bureau invites comment on RLSA's proposed rate structure, proposed rates, and cost calculations, including its weighting of individual providers' costs. Commenters who advocate alternative rates to those proposed by RLSA are urged to discuss any resulting changes that will be necessary in the TRS revenue requirement and contribution factor if the rate(s) they advocate are adopted.

Open Ratemaking Issues

26. The Commission's determination regarding VRS compensation for the remainder of the 2012-13 Fund year and subsequent years may be affected by how the Commission resolves various ratemaking issues raised in the 2011 VRS Reform FNPRM, the 2011 VRS Rate NPRM, and the 2010 VRS NOI. Therefore, the Bureau invites commenters to refresh the record of CG Docket Nos. 03-123 and 10-51 on the following issues that may affect the establishment of a VRS rate for the remainder of the 2012-13 Fund year and subsequent years:

27. Should the following cost categories, which RLSA has included in its calculation of the proposed rates, be allowable as part of the cost basis for rates:

- marketing (calculated by RLSA as \$0.0504 (2010), \$0.0441 (2011), and 0.0466 (2012) per minute);
- outreach (calculated by RLSA as \$0.2741 (2010), \$0.2606 (2011), and 0.2594 (2012) per minute); and

- research and development (calculated by RLSA as \$0.0486 (2010), \$0.0542 (2011), and \$0.0523 (2012) per minute)?

28. Should the Commission continue to limit the kinds and amount of capital costs that are allowed to be recovered? Thus, RLSA's proposed rate would allow an 11.25% return on invested capital, an element which has long been used as the basis for calculating TRS rates, as well as other common carrier rates, and which previously has been found to address adequately the recovery of interest and principal payments on debt, income taxes, and profits. RLSA calculates the weighted-average-per-minute return on investment, with allowance for taxes, to be \$0.0949 per minute in 2010, \$0.0778 per minute in 2011, and \$0.0594 per minute (projected) in 2012. The Bureau invites commenters to refresh the record on the appropriate treatment of capital costs, rate of return, and related issues. Parties that advocate a particular alternative for treatment of capital costs should specify the type of investment on which they believe providers should be authorized to recover a return, the percentage return that they believe is appropriate in light of current market conditions, an estimate of the dollar amount that their proposed capital cost element would add to proposed VRS rates, and the specific reasons why investment and return should be so defined for purposes of Fund-compensated VRS.

29. Should the Commission retain, modify, or eliminate the current tiered VRS rate structure?

30. Should there be a phase-in of the new VRS compensation rate or rates? How long should such a phase-in period last and how should rates be set during such an initial period? For example, should the Commission establish a three-year phase-in period, as RLSA suggests, with equal yearly adjustments to reach the new rate?

31. How long should the new rate remain in effect? In the 2007 TRS Rate Methodology Order, the Commission determined that VRS and IP Relay compensation rates should be set for a three-year period, subject to certain adjustments. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (2007 TRS Rate Methodology Order), CG Docket No. 03-123, published at 73 FR 3197, January 17, 2008. In the 2010 TRS Rate Order, the Commission again

adopted a three-year rate for IP Relay, but it adopted a one-year interim rate for VRS. That interim VRS rate, however, was extended in 2011 and 2012. Should the new VRS rate likewise be instituted for a three-year period, or a different period?

32. As noted above, parties that disagree with RLSA's proposed cost categories or rate tiers, or have views on the timing and duration of the rate, should offer specific and detailed alternatives and should focus their comments, to the maximum extent practicable, on data, views, and arguments that can be made publicly available, including the specific dollar amounts and percentages.

FEDERAL COMMUNICATIONS COMMISSION.

Karen Peltz Strauss,
Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012-26553 Filed 10/26/2012 at 8:45 am; Publication Date: 10/29/2012]